

Paliani v Selapack

2017 NY Slip Op 32950(U)

February 22, 2017

Family Court, Genesee County

Docket Number: V-00645-16

Judge: Eric R. Adams

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STATE OF NEW YORK

COUNTY OF GENESEE

FAMILY COURT

NICHOLAS PALIANI,

Petitioner,

- against -

Docket No. V-00645-16

File #: 9630

STEPHANIE SELAPACK,

Respondent.

STEPHANIE SELAPACK,

Petitioner,

- against -

Docket No. V-00784-16

File #: 9630

NICHOLAS PALIANI,

Respondent.

MEMORANDUM OF DECISION

This is an initial application for custody of Alysa S.. Petitioner-father is twenty-nine years of age. Respondent-mother will be twenty-one in April of this year.

The parties commenced an online relationship in February of 2015. They then met a couple of weeks later and by mid to late March, 2015, Respondent-mother was pregnant with Alysa. Petitioner-father currently resides in his mother's home in LeRoy, N.Y. He has lived there for several years. He is currently unemployed. There was little information provided about his work history or overall financial stability.

Respondent-mother is also unemployed. She currently resides in an apartment with Alysa in Erie County. She is being evicted from that apartment for non-payment of rent.

She is in the process of relocating to Perry, N.Y. and intends to reside with an acquaintance, Alycia J., whom she met through a friend about three years ago. Respondent-mother will be paying rent which she expects to get from Public Assistance through Wyoming County. Little testimony was offered as to the Respondent-mother's relationship with Ms. J.. They both describe each other as friends. Ms. J. resides in a house owned by her mother. She does not own a vehicle nor hold a valid driver's license. She supports herself by Social Security payments related to a seizure disorder that prevents her from working. Respondent-mother also has no driver's license nor a vehicle. Her transportation will be limited to being driven around by Ms. J.'s sister. No testimony was presented suggesting this other individual was aware she was being relied upon nor her availability. The Perry residence will be Respondent-mother's fourth residence in the last year. How long she will remain on good terms with Ms. J. is difficult to know.

Both parents appear capable of providing for Alysa's necessities. While she suffers from some form of seizure disorder, both parties seem understanding of the symptoms and what needs to be done until medical help arrives. Both parents are reliant on others to meet their financial needs. Petitioner-father's supports are more stable than those of Respondent-mother and he is more accustomed to the concept of work and financial security, but he also would be accessing public benefits but for his family supports. Neither party has a criminal record nor is there any credible evidence of alcohol or drug abuse.

Paramount in child custody cases, of course, is the ultimate best interests of the child. Friederwitzer v. Friederwitzer 55 N.Y.2d 89, 94 (1982). Throughout years of litigation numerous factors have been identified bearing upon the best interests of the child including the quality of the home environment and the parental guidance the custodial

parent is able to provide for the child ..., the ability of each parent to provide for the child's emotional and intellectual development..., the financial status and ability of each parent to provide for the child..., the relative fitness of the respective parents, and the length of time of the present custodial arrangement. Maier v. Maier 1 A.D.3d 987 (4th Dept., 2003). While both parents have different skill sets and circumstances, the difference between the two homes is not significant. However, also of importance is the ability and willingness of a parent to foster a relationship between the child and the other parent. An inability or unwillingness to do so is evidence of unfitness. Thayer v. Ennis 292 A.D.2d 824 (4th Dept., 2002).

Here the record is replete with statements and actions by Respondent-mother which reflect an ongoing intent to frustrate and demean Petitioner-father. Respondent-mother acknowledges Petitioner-father to be the biological father of the child and the testimony fails to suggest there was ever any question about paternity. However, Respondent-mother refused to include Petitioner-father on the child's birth certificate. She frustrated his ability to see the child at the time of the birth of the child and failed or refused to sign an acknowledgment of paternity. As a result, Petitioner-father was put through the effort and time of court proceedings to obtain an Order of Filiation. Respondent-mother has relocated to Erie County and set very restrictive parameters to any visitation requiring Petitioner-father obtain a court order establishing specific visitation days and hours. Petitioner-father testified to numerous emails and text messages in which Respondent-mother repeatedly referred to him by mean and spiteful names. Her malevolent attitude toward the Petitioner-father was reinforced by similar names used against his child from another relationship. Respondent-mother wasted Petitioner-father's time and financial resources by requesting

he help her with transportation to one of Alysa's medical appointments. Then, after Petitioner-father drives approximately an hour to pick up her and the child, she refused to get in the car. To make matters worse, she postponed the medical appointment to later in the day and failed to notify Petitioner-father so he could attend. The child suffered a seizure in October, 2016, but Respondent-mother failed to tell Petitioner-father until late December, 2016. This failure happened despite entry of a temporary order in October, 2016, specifically directing both parties keep the other apprised of medical issues involving the child.

Decisions have jealously guarded the relationship between a non-custodial parent and his or her child. Interference with that relationship by the custodial parent has been said to be "an act so inconsistent with the best interests of the child as to, per se, raise a strong probability that the offending party is unfit to act as custodial parent". Perez v. Perez 239 A.D.2d 868 (4th Dept., 1997). Additionally, in view of the overt hostility of Respondent-mother toward the Petitioner-father, the Court finds an award of joint custody would be inappropriate. Bliss v. Ach 56 N.Y.2d 995 (1982). The Court makes an award of the custody of Alysa to the Petitioner-father. Respondent-mother shall have visitation with the child each weekend. The first weekend following the issuance of this decision shall be from Friday at 6:00 p.m. to Sunday at 6:00 p.m. Respondent-mother shall pick up the child at the home of the Petitioner-father at the commencement of the visitation period and Petitioner-father shall pick up the child at the end of the visitation period at the home of Respondent-mother. The following weekend Respondent-mother shall have visitation with the child Sunday from 9:30 a.m. to 6:00 p.m. The exchange for visitation shall take place at the gas station located at the intersections of Route 19 and 63 in the hamlet of

Pavilion, N.Y.¹ The weekend visitation shall alternate thereafter. Each party shall be entitled to one week of uninterrupted time with the child each summer. Respondent-mother shall have priority of weeks in odd-numbered years and Petitioner-father shall have priority of weeks in even-numbered years. The party having priority shall notify the other party not later than May 1 of the week of visitation they wish to exercise. Should the party having priority fail to notify the other parent by May 1 that parent loses their priority and priority shall be given to the parent first giving notice of their requested week. The parties shall share the holiday of Thanksgiving. During odd-numbered years, Respondent-mother shall have visitation with the child from 9:30 a.m. to 2:00 p.m. and in even-numbered years from 2:00 p.m. to 7:00 p.m. The exchange for visitation as noted above shall be in Pavilion, N.Y. During odd-numbered years, Respondent-mother shall have visitation with the child on Christmas Eve from noon until 10:00 a.m. on December 25. In odd years, she shall have visitation December 25 at 10:00 a.m. until December 26 at 10:00 a.m. On odd-numbered years, the Petitioner-father shall have the child from 10:00 a.m. Christmas Day until 10:00 a.m. December 26 and in even years from noon on December 24 to 10:00 a.m. on December 25. Those time periods would apply only if the Christmas holiday falls during Respondent-mother's weekend visitation. The parties shall alternate the holiday of Easter each year with Petitioner-father having visitation in even-numbered years. If such Easter visit coincides with Respondent-mother's full weekend visit, that visit shall end Sunday at 9:30 a.m. If it falls on a weekend of a Sunday only visit, there shall be no visit that Sunday.

Respondent-mother shall have independent access to the child's medical and educational providers and records. Petitioner-father shall provide the Respondent-mother with contact information for all such providers and shall sign any releases required by those

providers to permit Respondent-mother to obtain such information or speak with the educational or medical providers. Respondent-mother shall take any and all steps necessary to assure that there is no unsupervised contact between the child and Douglas P. anytime that the child is in her care. Each party shall continue to keep the other apprised of any medical issues involving the child as soon as reasonably possible. The award of custody to Petitioner-father will commence with his period of visitation commencing Friday, February 24, 2017.

Counsel for Petitioner-father is directed to submit an order consistent herewith.

Dated: February 22, 2017

/s/ Eric R. Adams

HON. ERIC R. ADAMS
Family Court Judge

¹ In the event Respondent-mother is still residing in Erie County, the visitation exchange shall occur at the parking lot of the Flying J at exit 48A of the N.Y.S. Thruway.